

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Nicholas Walkowski, *et al.*,

Plaintiffs,

Case No. 22-cv-11551

v.

Judith E. Levy

United States District Judge

Mill City Mortgage Loan Trust

2018-4, Wilmington Savings Fund

Society, FSB, as trustee, *et al.*,

Mag. Judge Curtis Ivy, Jr.

Defendants.

_____/

**ORDER STRIKING DEFENDANT'S NOTICE OF REMOVAL [1]
AND PLAINTIFFS' AMENDED COMPLAINT [7] AND DENYING
WITHOUT PREJUDICE AS MOOT DEFENDANT'S
MOTION TO DISMISS [2]**

On July 8, 2022, Defendant Mill City Mortgage Loan Trust 2018-4, Wilmington Savings Fund Society, FSB, as trustee,¹ filed a notice of removal in this case. (ECF No. 1.) Attached to the notice of removal is a copy of the complaint filed in state court by Plaintiffs Nicholas Walkowski

¹ Defendant indicates in the notice of removal that it was “*erroneously sued separately* [in the state court action removed to this Court] *as* ‘Mill City Mortgage Loan Trust 2018-4’ and ‘Mill City Mortgage Loan Trust 2018-4, Wilmington Savings Fund Society, FSB, as trustee[.]’” (ECF No. 1, PageID.1 (emphasis in original).)

and Michelle Walkowski. (ECF No. 1-1, PageID.15–35.) On July 15, 2022, Defendant filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). (ECF No. 2.) On July 22, 2022, Plaintiffs filed an amended complaint that names an additional Defendant and includes additional counts.² (ECF No. 7.)

Plaintiffs’ original and amended complaints contain the full names of minors and are therefore not in compliance with Federal Rule of Civil Procedure 5.2(a)(3).³ Accordingly, the notice of removal (ECF No. 1) and the amended complaint (ECF No. 7) are STRICKEN. By **August 3, 2022**, Defendant Mill City Mortgage Loan Trust 2018-4, Wilmington Savings Fund Society, FSB, as trustee, must refile the notice of removal together with a redacted version of the original complaint that refers to the minors by their initials, as required by Rule 5.2(a)(3). By **August 10, 2022**,

² Plaintiffs filed their amended complaint by right. *See* Fed. R. Civ. P. 15(a)(1)(B) (stating that a pleading may be amended “once as a matter of course” within “21 days after service of a motion under Rule 12(b)”).

³ Federal Rule of Civil Procedure 5.2(a)(3) provides that “[u]nless the court orders otherwise, in an electronic or paper filing with the court that contains . . . the name of an individual known to be a minor, . . . a party or nonparty making the filing may include only . . . the minor’s initials.” Fed. R. Civ. P. 5.2(a)(3).

Plaintiffs may file a redacted version of the amended complaint that refers to the minors by their initials, as required by Rule 5.2(a)(3).

Because the removal notice and the amended complaint are stricken, the Court DENIES WITHOUT PREJUDICE AS MOOT Defendant's motion to dismiss.⁴ (ECF No. 2.)

IT IS SO ORDERED.

Dated: July 27, 2022
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

⁴ The filing of Plaintiffs' amended complaint—which adds a new party and new claims and is complete in itself and makes no reference to the initial complaint—provides the Court with a separate basis for denying without prejudice as moot Defendant's motion to dismiss. “[A]n amended complaint supersedes all prior complaints.” *Drake v. City of Detroit*, 266 F. App'x 444, 448 (6th Cir. 2008). “It follows that “motions directed at the superseded pleading,” such as Defendant's motion here, “generally are to be denied as moot.”” *Nails v. RPI-Section 8 Hous.*, No. 2:17-cv-13702, 2019 WL 1112381, at *4 (E.D. Mich. Mar. 11, 2019) (quoting *Heard v. Strange*, No. 2:17-cv-13904, 2018 WL 4189652, at *2 (E.D. Mich. June 21, 2018), *report and recommendation adopted*, No. 17-13904, 2018 WL 4184633 (E.D. Mich. Aug. 31, 2018)); see *Braden v. United States*, 817 F.3d 926, 930 (6th Cir. 2016) (“An amended pleading supersedes a former pleading if the amended pleading is complete in itself and does not refer to or adopt a former pleading.” (internal quotation marks and citation omitted)).

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or first-class U.S. mail addresses disclosed on the Notice of Electronic Filing on July 27, 2022.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager